

STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

(R. Griffin, J. Neff and H. White)

RONALD G. SWEATT,

Plaintiff-Appellee,

Supreme Court No. 120220

vs.

Court of Appeals No. 226194

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Workers' Compensation Appellate
Commission Docket No. 99-0026

Defendant-Appellant.

SUPPLEMENT TO AMICUS CURIAE BRIEF OF
LIBNER, VanLEUVEN, EVANS, PORTENGA & SLATER, P.C.

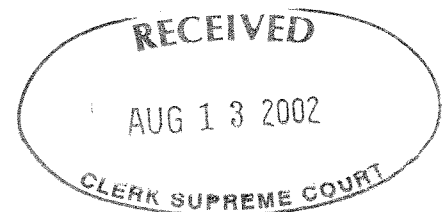
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¹

WDCA = Workers Disability Compensation Act, MCL 418.xxx

DISCUSSION

The Court of Appeals in the case at bar split down the middle on whether "work" as used in the last sentence of WDCA 361(1) means "all work" or "some work."

In its original brief, Amicus pointed out that there are cases supporting both definitions of the word "work": *Haske v Transport Leasing Co*, 455 Mich 628 (1997) ("work" as used in WDCA 301(4) means some, not all work); *Peck v GMC*, 164 Mich App 580 (1987), lv den 431 Mich 872 (1988), rec den 433 Mich 879 (1989) ("work" as used in WDCA 373(1) means all work, not some work). Since the word is ambiguous, rules of construction must be applied. Those rules of construction call for a definition that would grant rather than deny benefits (Discussion I.C., pp. 13-17).

A few days after the previous brief was filed, the Supreme Court issued an opinion that sheds light on how "work" is defined. In *Sington v Chrysler Corp*, __ Mich __ (2002) (No. 119291, rel. July 31), the Court construed WDCA 301(4) (the Act's general definition of disability): "a limitation of an employee's wage earning capacity in work suitable to his or her qualifications or training." The defendant in *Sington* argued that "work" means *all* work, so that an injury that reduces earning capacity in fewer than all jobs is not "disabling." The Court agreed, holding that a worker is not disabled if there is *any* available, non-accommodated job that pays as well.²

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Although the Court spent more time discussing the definition of "wage earning capacity" than it did the meaning of "work," the meaning of the latter word is what made the

With *Haske*'s contrary ruling now overruled by *Sington*, the case authority now consistently holds (consistent with Judge Neff's opinion in the case at bar) that "work" as used in Michigan's Worker's Compensation Act means *all* work, not *some* work. It follows that imprisonment or commission of a crime is disqualifying only if it prevents a worker from handling *all* work.

Moreover, the Court in *Sington* held that the *plain language* of the statute supported its holding, thus avoiding the necessity of addressing rules of construction (which apply only where the language is ambiguous). *Sington* therefore stands for the proposition that "work" as used in the Worker's Compensation Act *unambiguously* means all work.³ Although (as this case shows) that construction does not render WDCA 361(1) meaningless, even if it did, the Court would be bound to follow the plain meaning. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 402 (2000) (WDCA 301(5) applied literally, though it eviscerates the stepped-up wage loss benefits mandated by WDCA 356(1)).

difference in the result. Specifically, if "work" means *some* work (meaning one job), since inability to do that one job certainly limits ability to earn maximum wages (which is how the Court defined "wage earning capacity") *at that job*, the worker would be disabled. By holding that such a worker is *not* disabled, the Court in *Sington* necessarily held that "work" in 301(4) includes *more than* one job; that the worker's ability to earn maximum wages in *all* non-accommodated work/jobs must be reduced before a disability exists.

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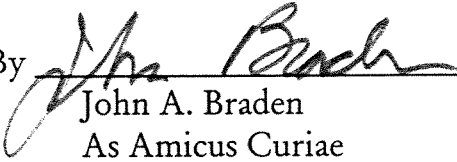
The other holding of *Sington* - redefining "disability" - has no application to the case at bar, since Defendant stipulated that Plaintiff continued to be disabled (45a), thus waiving any argument to the contrary.

Since commission of a crime prevented Plaintiff Sweatt from performing *all* work only during the time he was imprisoned and not working (i.e., from January 12 to May, 1995), WDCA 361(1) authorizes disqualification only during that period.

Respectfully submitted,

LIBNER, VanLEUVEN, EVANS,
PORTENGA & SLATER, P.C.

DATED: August 12, 2002

By _____
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As Amicus Curiae